



(Billing Code 5001-06-P)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 216, 247, and 252

RIN 0750-AH90

Defense Federal Acquisition Regulation Supplement: Clauses with Alternates—Transportation (DFARS Case 2012-D057)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to create an overarching prescription for each set of transportation-related provisions/clauses with one or more alternates. The rule also proposes to add a separate prescription for the basic clause as well as each alternate. In addition, the proposed rule would include the full text of each provision and/or clause alternate.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2012-D057, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit

comments via the Federal eRulemaking portal by entering "DFARS Case 2012-D057" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2012-D057." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2012-D057" on your attached document.

- o E-mail: dfars@osd.mil. Include DFARS Case 2012-D057 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6098; facsimile 571-372-6101.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to create an overarching prescription for each set of transportation-related provisions/clauses with one or more alternates. The rule also proposes to add a separate prescription for the basic clause as well as each alternate. In addition, the proposed rule would include the full text of each provision/clause alternate. For clarity, the preface of the alternate will continue to explain what portions of that alternate are different from the basic provision/clause.

Separate prescriptions for the basic and alternates of DFARS provisions and clauses will facilitate the use of automated contract writing systems. The proposed rule will not revise the prescriptions in any substantive way or change the applicability of the provisions/clauses or their alternates.

The inclusion of the full text of each provision/clause alternate aims to make the terms of a provision/clause alternate clearer to offerors and to DoD contracting officers. The current convention for alternates is to show only the changed paragraphs from the basic provision or clause. This proposed rule would include the full text of each provision/clause and each alternate, which will assist in making solicitation and contract terms and conditions easier to read and understand. By placing alternates in full text, all paragraph substitutions

from the basic provision/clause will have already been made. Inapplicable paragraphs from the basic provision/clause that are superseded by the alternate will not be included in the solicitation or contract in order to prevent confusion.

Although this rule proposes to include each alternate in full, it retains the language that precedes the provision/clause or alternate, which includes the location of the alternate's prescription and a statement that identifies which paragraphs were changed from the basic provision/clause. Further, alternates are proposed to have individual titles that tie them to the basic clause, e.g., "Requirements–Alternate I" in lieu of "Alternate I."

This rule proposes to revise the naming convention for provisions/clauses with alternates to indicate that there is at least one alternate by revising the title of the basic clause to read "Title–Basic." Thus, if adopted as final, the naming convention will differentiate at the provision/clause title whether there are any alternates associated with that provision/clause.

II. Discussion

This proposed rule addresses only the solicitation provisions and clauses in DFARS part 247 that have, or are, alternates. The remaining prescriptions in DFARS part 247 are not proposed to be changed in any way by this proposed rule.

There are three DFARS transportation-related provisions/clauses that would be affected by this rule, as follows:

- 252.247-7008, Evaluation of Bids, with one alternate.
- 252.247-7023, Transportation of Supplies by Sea, with three alternates.
- 252.247-7015, which is an alternate to FAR 52.216-21.

The clause currently at DFARS 252.247-7015, Requirements, presents a unique situation. Although it is located with transportation clauses, it is an alternate to be used with the basic FAR clause at 52.216-21, also entitled "Requirements," and with Alternate III to the FAR clause. This rule proposes to create a stand-alone DFARS clause and one alternate and to relocate them to DFARS 252.216 because they apply principally to requirement contracts rather than transportation. The rule proposes to create the corresponding prescriptions at 216.506(d).

The other two clauses addressed in this proposed rule are proposed to remain in DFARS 252.247. DFARS 252.247-7008, Evaluation of Bids, and its Alternate I are prescribed at DFARS 247.271-3(a). The introductory text in DFARS 247.271-3 provides the overarching prescription for 15 provisions/clauses. This rule proposes to revise paragraph (a) of DFARS 247.271-3 to provide the prescriptions for DFARS 252.247-7008, Evaluation of Bids.

"Alternate I" to DFARS 252.247-7008 would be prescribed to apply when adding "additional services" items to the schedule. The text of the current DFARS 252.247-7008 Alternate I would no longer consist solely of paragraph (e); it would be renamed 252.247-7008, Evaluation of Bids—Alternate I, and its text would include the entire text of DFARS 252.247-7008 with the addition of paragraph (e).

The clause at DFARS 252.247-7023, Transportation of Supplies by Sea, currently has three alternates and is prescribed at DFARS 247.574(b). The rule proposes to add a prescription for the basic clause at DFARS 247.574(b)(1). The rule also proposes to eliminate Alternate III, because it proposes to revise the basic clause and Alternates I and II to add the phrase "If this contract exceeds the simplified acquisition threshold" as a condition precedent to the applicability of paragraphs (f) and (g). This change would eliminate the need for Alternate III, which applies only when the anticipated value of the procurement is at or below the simplified acquisition threshold.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it merely revises the format, not the substance, of prescriptions for provisions and clauses with alternates, as well as includes the full text of each provision or clause in each alternate.

However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The purpose of this case is to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to create an overarching prescription for each set of provisions/clauses with one or more alternates. The overarching prescription is intended to include the common requirements for the use of that provision/clause set.

The use of automated contract writing systems will be facilitated by revising the prescription format for DFARS provisions/clauses that have one or more alternates. This rule proposes to revise the prescription format so that there is an overarching prescription that covers the elements that the basic provision/clause and all its alternates have in common. Then, there will be a separate prescription for use of the basic prescription/clause and each alternate. In addition, each alternate provision/clause will be presented in total, not just the paragraph or section that is different from the basic provision/clause. This will make the terms of a provision or clause alternate clearer to offerors, as well as to DoD contracting officers, because all paragraph substitutions will have already been made. Inapplicable paragraphs from the basic provision/clause that are superseded by the alternate will not be included in the solicitation or contract to prevent confusion.

Potential offerors, including small businesses, initially may be affected by this rule by seeing an unfamiliar format for provision/clause alternates in solicitations and contracts issued by DoD contracting activities. An average of 12,618,521 new contracts was awarded in Fiscal Years 2011 and 2012, and an average of 1,557,852 of these actions (12.35%) was awarded to small businesses. It is unknown how many of these contracts

were awarded that included an alternate to a DFARS provision or clause. Nothing substantive will change in solicitations or contracts for potential offerors, and only the appearance of how provision/clause alternates are presented in solicitations and contracts will be changed. This rule may result in potential offerors, including small businesses, expending more time to become familiar with and to understand the new format of provision/clause alternates in full text contained in contracts issued by any DoD contracting activity. The rule also anticipates saving contractors time by making all paragraph substitutions from the basic clause, and by not requiring offerors to read inapplicable paragraphs contained in the basic provisions/clauses where alternates are also included in the solicitations and contracts. The overall burden caused by this rule is expected to be negligible and will not be any greater on small businesses than it is on large businesses.

This rule does not add any new information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were determined that will accomplish the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2012-D057), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 216, 247, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CRF parts 212, 216, 247, and 252 are proposed to be amended as follows:

1. The authority citation for parts 212, 216, 247, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR Chapter 1.

PART 212 - ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.301 is amended by revising paragraph (f)(lvii) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(lvii) Use the clause at [252.247-7023](#), Transportation of Supplies by Sea, as prescribed in [247.574](#)(b)(1), to comply with the Cargo Preference Act of 1904 (10 U.S.C. 2631(a)).

(A) Use the clause Transportation of Supplies by Sea--Basic, as prescribed in 247.574(b)(1).

(B) Use the clause Transportation of Supplies by Sea--Alternate I, as prescribed in 247.574(b)(2).

(C) Use the clause Transportation of Supplies by Sea--Alternate II, as prescribed in [247.574](#)(b)(3).

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PART 216 - TYPES OF CONTRACTS

3. Amend section 216.506 by revising paragraph (d) to read as follows:

216.506 Solicitation provisions and contract clauses.

* * * * *

(d) Use the basic or the alternate of the clause at 252.216-70XX, Requirements, in lieu of the clause at FAR 52.216-21, Requirements, in solicitations and contracts when a requirement for the preparation of personal property for shipment or

storage, or for the performance of intra-city or intra-area movement, is contemplated.

(1) Use the clause Requirements--Basic if the acquisition does not involve a partial small business set-aside.

(2) Use the clause Requirements--Alternate I if the acquisition involves a partial small business set-aside.

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PART 247 - TRANSPORTATION

4. Revise section 247.271-3 to read as follows:

247.271-3 Solicitation provisions, schedule formats, and contract clauses.

When acquiring services for the preparation of personal property for movement or storage, or for performance of intra-city or intra-area movement, use the following provisions, clauses, and schedules. Revise solicitation provisions and schedules, as appropriate, if using negotiation rather than sealed bidding. Overseas commands, except those in Alaska and Hawaii, may modify these clauses to conform to local practices, laws, and regulations.

(a) The basic or the alternate of the provision at [252.247-7008](#), Evaluation of Bids.

(1) Use the provision Evaluation of Bids--Basic when there are no "additional services" items being added to the schedule.

(2) Use the provision Evaluation of Bids–Alternate I when adding “additional services” items to the schedule.

(b) The provision at [252.247-7009](#), Award.

(c) In solicitations and resulting contracts, the schedules provided by the installation personal property shipping office. Follow the procedures at [PGI 247.271-3](#)(c) for use of schedules.

(d) The clause at [252.247-7010](#), Scope of Contract.

(e) The clause at [252.247-7011](#), Period of Contract. When the period of performance is less than a calendar year, modify the clause to indicate the beginning and ending dates. However, the contract period must not end later than December 31 of the year in which the contract is awarded.

(f) In addition to designating each ordering activity, as required by the clause at FAR 52.216-18, Ordering, identify by name or position title the individuals authorized to place orders for each activity. When provisions are made for placing oral orders in accordance with FAR 16.504(a)(4)(vii)), document the oral orders in accordance with department or agency instructions.

(g) The clause at [252.247-7012](#), Ordering Limitation.

(h) The clause at [252.247-7013](#), Contract Areas of Performance.

(i) The clause at [252.247-7014](#), Demurrage. See additional information at [PGI 247.271-3](#)(c)(1) for demurrage and detention charges.

(j) The clause at [252.247-7016](#), Contractor Liability for Loss and Damage.

(k) The clause at [252.247-7017](#), Erroneous Shipments.

(l) The clause at [252.247-7018](#), Subcontracting.

(m) The clause at [252.247-7019](#), Drayage.

(n) The clause at [252.247-7020](#), Additional Services.

(o) The clauses at FAR 52.247-8, Estimated Weight or Quantities Not Guaranteed, and FAR 52.247-13, Accessorial Services--Moving Contracts.

(p) See the prescription at 216.506(d) requiring the use of 252.216-70XX, Requirements.

5. Amend section 247.574 by revising paragraph (b) to read as follows:

247.574 Solicitation provisions and contract clauses.

* * * * *

(b) Use the basic or one of the alternates at [252.247-7023](#), Transportation of Supplies by Sea, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, except those for direct purchase of ocean transportation services.

(1) Use the clause Transportation of Supplies by Sea-Basic, unless any of the supplies to be transported are commercial items that are—

(i) Shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations when the contract is not a construction contract; or

(ii) Commissary or exchange cargoes transported outside of the Defense Transportation System when the contract is not a construction contract.

(2) Use the clause Transportation of Supplies by Sea-- Alternate I, if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations, exercises, or forces deployed in humanitarian or peacekeeping operations, when the contract is not a construction contract.

(3) Use the clause Transportation of Supplies by Sea-- Alternate II, if any of the supplies to be transported are commercial items that are commissary or exchange cargoes transported outside of the Defense Transportation System (10 U.S.C. 2643), when the contract is not a construction contract.

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PART 252 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Add section 252.247-70XX to read as follows:

252.216-70XX Requirements.

As prescribed in [216.506](#)(d), use the following clause or its alternate.

(a) *Requirements-Basic*. For the specific prescription for use of the basic clause, see 216.506(d)(1).

REQUIREMENTS-BASIC (DATE)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The

Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The rights and obligations of the Contractor and the Government for those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period.

(End of clause)

(b) *Requirements--Alternate I.* For the specific prescription for use of Alternate I, see 216.506(d)(2). Alternate I uses a different paragraph (c) than the basic clause.

REQUIREMENTS--ALTERNATE I (DATE)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) The Government's requirements for each item or subitem of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside

contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The rights and obligations of the Contractor and the Government for

those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period.

(End of clause)

7. Revise section 252.247-7008 to read as follows:

252.247-7008 Evaluation of bids.

As prescribed in [247.271-3](#)(a), use the basic provision or its alternate:

(a) *Evaluation of Bids--Basic.* For the specific prescription for use of the basic provision, see 247.271-3(a)(1).

EVALUATION OF BIDS--BASIC (DATE)

(a) The Government will evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as "No Charge," or the letters "N/C" or "0," must be made in the unit price column of the Schedule.

(2) Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages

to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will assume that the administrative cost to the Government for issuing and administering each contract awarded under this solicitation would be \$500.

(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in amounts per hundred pounds on gross or net weights, whichever is applicable. All charges shall be subject to, and payable on, the basis of 100 pounds minimum weight for unaccompanied baggage and a 500 pound minimum weight for household goods, net or gross weight, whichever is applicable.

(End of provision)

(b) *Evaluation of Bids–Alternate*. For the specific prescription for use of Alternate I, see [247.271-3](#)(a)(2). Alternate I adds a paragraph (e).

EVALUATION OF BIDS–ALTERNATE I (DATE)

(a) The Government will evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as "No Charge," or the letters "N/C" or "0," must be made in the unit price column of the Schedule.

(2) Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will assume that the administrative cost to the Government for issuing and administering each contract awarded under this solicitation would be \$500.

(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in amounts per hundred pounds on gross or net weights, whichever is applicable. All charges shall be subject to, and payable on, the basis of 100 pounds minimum weight for unaccompanied baggage and a 500 pound minimum weight for household goods, net or gross weight, whichever is applicable.

(e) Notwithstanding paragraph (a), when "additional services" are added to any schedule, such "additional services" items will not be considered in the evaluation of bids.

(End of provision)

252.247-7015 [Removed and Reserved]

8. Remove and reserve section 252.247-7015.

9. Revise section 252.247-7023 to read as follows:

252.247-7023 Transportation of supplies by sea.

As prescribed in 247.574(b)(1), use the following clause or one of its alternates.

(a) *Transportation of Supplies by Sea-Basic*. For the specific prescription for use of the basic clause, see 247.574(b)(1).

TRANSPORTATION OF SUPPLIES BY SEA--BASIC (DATE)

(a) *Definitions*. As used in this clause—

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) "Department of Defense" (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if—

(i) This contract is a construction contract; or

(ii) The supplies being transported are—

(A) Noncommercial items; or

(B) Commercial items that—

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process

requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

- (1) Prime contract number.

- (2) Name of vessel.
- (3) Vessel flag of registry.
- (4) Date of loading.
- (5) Port of loading.
- (6) Port of final discharge.
- (7) Description of commodity.
- (8) Gross weight in pounds and cubic feet if available.
- (9) Total ocean freight in U.S. dollars.
- (10) Name of steamship company.

(f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL			

(g) If this contract exceeds the simplified acquisition threshold and if the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts, for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph

(h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

(b) *Transportation of Supplies by Sea-Alternate I.* For the specific prescription for use of Alternate I, see [247.574](#) (b) (2). Alternate I uses a different paragraph (b) for paragraph (b) of [than] the basic clause.

TRANSPORTATION OF SUPPLIES BY SEA-ALTERNATE I (DATE)

(a) *Definitions.* As used in this clause—

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) "Department of Defense" (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is

conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations); or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

[(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the

Maritime Administration, Office of Cargo Preference, U.S.
Department of Transportation, 400 Seventh Street SW, Washington,
DC 20590, one copy of the rated on board vessel operating
carrier's ocean bill of lading, which shall contain the
following information:

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of steamship company.

(f) If this contract exceeds the simplified acquisition
threshold, the Contractor shall provide with its final invoice
under this contract a representation that to the best of its
knowledge and belief—

(1) No ocean transportation was used in the performance of
this contract;

(2) Ocean transportation was used and only U.S.-flag
vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL			

(g) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

(End of clause)]

(c) *Transportation of Supplies by Sea—Alternate II.* For the specific prescription for use of Alternate II, see [247.574](#) (b) (3). Alternate II uses a different paragraph (b) than the basic clause.

TRANSPORTATION OF SUPPLIES BY SEA—ALTERNATE II (DATE)

(a) *Definitions.* As used in this clause—

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) "Department of Defense" (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel

registered or having national status under the laws of the United States.

(b) (1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643 (Note: This contract requires transportation of commissary or exchange cargoes outside of the Defense Transportation System in accordance with 10 U.S.C. 2643).

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag

vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of steamship company.

(f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice

under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL			

(g) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been

unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

(End of clause)

[FR Doc. 2013-18972 Filed 08/07/2013 at 8:45 am; Publication Date: 08/08/2013]